

**City of Memphis  
Board of Ethics**

**May 22, 2019**

**Advisory Ethics Opinion No. 19-01**

**This opinion responds to a specific question presented, particularly whether certain behavior is permissible pursuant to the City of Memphis Code of Ethics, Ordinance 5206. It does not address any other applicable policy, local, state or federal laws. The Board of Ethics' jurisdiction is limited to the applicability of the City of Memphis Code of Ethics, Ordinance 5206, as amended. This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.**

**Question**

Does a conflict exist in awarding a city contract to a company that employs a current city employee? (Quoted from the Request for Ethics Opinion form).

**Opinion**

No employee shall enter into or derive any benefit, directly or indirectly, from any contractual arrangement with the City or its agencies. From the specific facts given, there is the appearance that a direct or indirect benefit is derived by the City employee. The Mayor's Executive Order addresses the actions of an employee; however, the awarding of said contract to Security Company, which employs the City employee, would be facilitating the prohibited conduct. Because of the City employee's employment with Security Company, General Services should consider Security Company's bid disqualified.

**Facts**

General Services is reviewing bids received for Armed Security Services at City Hall. One of the bidders, [herein referred to as "Security Company"], lists a current employee [herein referred to as Lieutenant] in their organizational chart. General Services has contacted MPD to determine if the Lieutenant has listed Security Company as his secondary employer. An MPD supervisor confirmed that he has not.

Per the President/Owner of Security Company, [the Lieutenant] at times serves as a consultant for the company. When needed, he aides in completing security assessments for government contracts, higher education contracts and other large scale projects. In addition to completing security assessments, he at times makes recommendations to [Security Company's] operations team during the bidding process in regards to staffing, equipment, surveillance and operations. The Lieutenant's services were neither solicited nor utilized when preparing and submitting the bid.

The Lieutenant is listed as a business consultant in Security Company's organizational chart. The chart shows his position at the same level as the Vice President and Chief Executive Officer, and there are ten (10) individuals listed in the chart. The Lieutenant is listed as a member of the Executive Team.

There are no facts to support that the Lieutenant works on a voluntary basis, or that he does not receive a financial benefit or compensation for his services to Security Company. No facts are given as to revenue distribution within Security Company.

### Analysis

The Lieutenant's employment at Security Company is at the center of the conflict. Section 7) of the Mayor's Executive Order provides the following:

Financial Interests. No employee shall enter into or derive any benefit, directly or indirectly, from any contractual arrangement with the City or its agencies. The normal employment compensation of a spouse whose regular, ongoing employer or business has a contractual arrangement with the City shall not be considered a benefit to the employee provided the employee did not assist his or her spouse in securing the contract with the City.

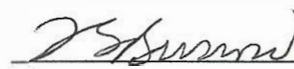
Security Company is seeking a contract with the City of Memphis, General Services division. It does not appear that the Lieutenant submitted the bid to enter the contractual arrangement, but is employed by Security Company. Whether or not the employee would benefit directly or indirectly from the contractual arrangement involves a consideration of the facts. As a member of the Executive Team, and being on the same level in Security Company's organizational chart as the Vice President and Chief Executive Officer, with only ten (10) members listed, it appears that the employee might benefit from the contractual arrangement. It also seems possible, or even likely, that the Lieutenant's services will be requested and utilized in fulfilling the contract, given the nature of the services.

Therefore, if General Services awards a contract to Security Company, which employs the Lieutenant, General Services would be facilitating the conduct which is prohibited by Section 7) of the Mayor's Executive Order.

### Conclusion

Based upon the foregoing, it is my opinion that under these facts, a Conflict of Interest exists/is created in General Services awarding a city contract to Security Company that employs the Lieutenant, who is a current City of Memphis employee. Therefore, General Services should consider Security Company's bid disqualified.

Board of Ethics, City of Memphis



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